IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.349 OF 1999.

Smt.Jafarbegum Mujafar Ali
Mir & ors. : Appellants.

versus

Shri Nandkishor Dnyaneshwar
Satav & ors. : Respondents.

Mr.Dilip Bodke for the appellants.
Mr.D.R.Mahadik i/by S.R.Singh advocate for Respondent Nos. 3 and 4.

CORAM : D.G.DESHPANDE,J.

DATED : 3rd March 2005.

ORAL ORDER

1. Heard advocates for the appellants and the respondent Nos. 2 and 3. It is necessary to clarify that Respondent Nos. 3 and 4 are the formal parties so far as this appeal is concerned. Because the tribunal i.e. Motor

Accident Claims Tribunal, Pune held that Original Opponent Nos. 2 and 3 were liable to pay the compensation. Those opponent Nos. 2 and 3 are now the Respondent Nos. 1 and 2 before this Court.

2. This appeal is filed for enhancement of compensation. Because according to the appellants they had claimed Rs.Three lacs as compensation whereas the Tribunal has awarded only Rs.1,50,000/- and, there was no reason much less any sufficient reason not to award the entire claim of Rs.Three lacs.

3. Deceased Mujafar Ali was going by jeep on 29th August 1986. The accident occurred as a dash to the jeep on Pune Solapur Road by a truck which was fully loaded with steel gurders. The truck gave dash against the jeep. As a result the victim died on the spot. Since the tribunal has awarded compensation against Respondent Nos. 1 and 2. There is no question of their liability and only question is, whether the claimants are entitled for enhanced compensation.

4. So far as quantum of compensation is

concerned, the tribunal accepted that the deceased was earning Rs.5000/- per month. There was sufficient evidence to come to this conclusion. Out of Rs.5000/- the deceased was paying monthly instalment of Rs.2000/- towards the loan which the deceased had taken for purchasing one truck which the deceased had given on hire to a transport company. Therefore, after deducting this amount of Rs.2000/-, monthly income of the deceased was Rs.3000/-. However, in spite of this, the court held that the income of the deceased was Rs.2000/-. Out of that, Rs.700/- were deducted for the personal expenses of the deceased and, then dependency factor was fixed at Rs.1300/-. But without taking into consideration any multiplier the tribunal awarded Rs.1,50,000/- including everything. This approach of the Court is totally wrong. Firstly the conclusion that the deceased was earning Rs.2000/- is against the record. Monthly income of the deceased so far as his family and himself is concerned, should have been taken as Rs.3000/-. Out of this Rs.3000/- after deducting 1/3rd for the personal expenses of deceased, Rs.2000/- should have been taken as dependency factor i.e. his contribution to the family.

Looking to the age of the deceased as 40 years, multipliers of 14 has to be applied. Even on applying this multiplier of 14, compensation, to be awarded, exceeds Rs.Three lacs. However, advocate for the appellants fairly concedes that the appellants would be satisfied if the compensation is fixed at Rs.Three lacs. In view of this, even if the total calculation comes to Rs.3,36,000/- i.e. Rs.2000 x 12 x 14. and, since the claim of the appellants before the tribunal was for Rs.Three lacs and, before this Court is also for Rs.Three lacs, the appeal has to be allowed to that extent. Hence the order :-

:ORDER:

The appeal is partly allowed.

Respondent Nos. 1 and 2 shall jointly and severally pay Rs.1,50,000/- more i.e. in addition to what has been awarded by the tribunal.

The respondents shall also be liable to pay interest at the same rate on the enhanced amount and the costs.

[D.G.DESHPANDE]

03/03/2005 JUDGE.